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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR MARTINEZ,

Plaintiff - Appellant,

v.

BUREAU OF IMMIGRATION AND  
CUSTOMS ENFORCEMENT,  
Employees; et al.,

Defendants - Appellees.

No. 06-56494

D.C. No. CV-06-01742-MJL

MEMORANDUM \*

Appeal from the United States District Court  
for the Southern District of California  
M. James Lorenz, District Judge, Presiding

Submitted February 18, 2009\*\*

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Victor Martinez, formerly a detainee of the Bureau of Immigration and  
Customs Enforcement, appeals pro se from the district court's order dismissing as

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

frivolous his action pursuant to *Bivens v. Six Unknown Named Federal Narcotics Agents*, 403 U.S. 388 (1971). We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion a district court's dismissal of a complaint as frivolous, *Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996) (order), and we affirm.

The district court did not abuse its discretion when it dismissed Martinez's complaint as frivolous because it repeated previously litigated claims. See 28 U.S.C. § 1915(e)(2)(B)(i) (requiring dismissal of a frivolous complaint filed in forma pauperis); *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). Martinez already brought, and voluntarily dismissed, the same claims presented in the instant action in *Martinez v. Dep't of Homeland Sec., et al.*, S.D. Cal. Civil Case No. 04cv1377 JM (JMA) and *Martinez v. Dep't of Homeland Sec., et al.*, S.D. Cal. Civil Case No. 04cv1795 LAB (JMA). See *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1076 (9th Cir. 1999) (under Fed. R. Civ. P. 41(a)(1), "a voluntary dismissal of a second action operates as a dismissal on the merits if the plaintiff has previously dismissed an action involving the same claims.").

**AFFIRMED.**